IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1840 OF 2004

Reliance Industries Ltd. ...Petitioner

vs.

1. Rajan D. Bhojane & another. ...Respondents.

Mr.C.U.Singh with Ms.D'Souza i/b. A.S.Dayal & Associates, for Petitioner.

Mr.R.M.Joshi, for Respondent no.1.

CORAM: D.K.DESHMUKH,J.

DATED: 3rd August, 2006.

P.C.:-

1. By this petition, the petitioner challenges the order dated 18.8.2003 passed by the Industrial Court in the Complaint (ULP) No.355 of 2001. By that order the application made by the present petitioner who was respondent no.2 in the complaint is dismissed. The respondent no.1 had filed the

complaint under the Unfair Labour Practices Act. In that complaint, he claims that he is an employee of the respondent no.1 establishment viz. M/s.Rahul Management Services Pvt.Ltd. and that respondent no. 1 has engaged in unfair labour practices. In paragraph 4(a) he states that he has joined respondent no.2 as a party to the complaint because respondent no.2 is a principal employer and according to the respondent no.1 under the labour law a principal employer has some liability for payment of salary to the employees. In this application, the present petitioner who was respondent no.2 in the complaint had raised preliminary objection to the maintainability of the complaint against respondent no.2 because according to the present petitioner, there is no employer-employee relationship in existence between the present respondent no.1 who was the original complainant and the present petitioner who was the original respondent no.2. A reply was filed by the respondent no.1 to the preliminary objection. In paragraph 3 of that reply he has stated thus:-

"The complainant submits that no

> employer-employee relationship is claimed by the complainant with the respondent no.2 company and the said company is made party for the limited purpose of the compliance of the mandatory requirement under the Contract Labour (Abolition & Regulation) Act and this Hon'ble Court has jurisdiction to pass necessary order."

2. Now it is settled law that the Labour Court and the Industrial Court can assume jurisdiction over the subject matter brought before them if the subject matter is a dispute between the employer and employee. In the complaint, though the respondent no.1 was claiming relief against the present petitioner, he admits that there is no employer-employee relationship in existence between the petitioner and the respondent no.1. In the absence of any employer-employee relationship between the petitioner and the respondent no.1, the complaint

under the Unfair Labour Practices Act cannot be maintainable against the present petitioner. The subject matter of the dispute that arises under the unfair labour practice Act are the unfair labour practices adopted either by employer or employee. If there is no employer-employee relationship in existence between the parties, the Labour Court or the Industrial Court will not get the jurisdiction over the subject matter. It is thus clear that the order passed by the Labour Court suffers from non application of mind and is liable to be set aside.

3. In the result therefore, the petition succeeds and is allowed. The order impugned in the petition is set aside. The preliminary objection raised to the maintainability of the Complaint (ULP) no.355 of 2001 before the Industrial Court by the petitioner is upheld. It is held that the complaint as framed and filed by the present respondent no.1 as against the present petitioner who is respondent no.2 in the complaint, is not maintainable. Rule is made absolute accordingly. No order as to costs.